

REMARKS

Entry of the foregoing, reexamination and further and favorable reconsideration of the subject application in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested.

Applicants acknowledge the Interview Summary mailed January 18, 2005 recording a telephonic interview on January 13, 2005. The Interview Summary accurately describes the substance of the interview in which it was agreed that the finality of the Office Action mailed October 15, 2004 should be withdrawn.

The Office Action Summary correctly indicates that claims 1, 6, 7 and 33-37 are pending in the application. Claims 1, 6, 7 and 33-37 are under consideration and stand rejected.

Claims 1, 34 and 37 have been amended. Claim 1 has been amended to incorporate subject matter formerly recited in claim 6, for grammatical correctness, and to delete subject matter that became unnecessary in view of the incorporation of subject matter from claim 6. Claim 6 has been canceled. Claim 34 has been amended to recite the deposit number of the strain *Mortierella sp.* SAM 2197 microorganism and to delete an unnecessary recitation. Claims 33, 35, and 36 have also been canceled. Claim 37 has been amended to depend from claim 34 in view of the cancellation of claim 35. Support for these amendments can be found throughout the specification and original claims as filed.

No prohibited new matter has been introduced by way of the above amendments. Applicants reserve the right to file a continuation or divisional application on subject matter canceled by way of this Amendment.

Rejections under 35 U.S.C. § 112, first paragraph

Claims 1, 7, 31-33 and 35-37 stand rejected under 35 U.S.C. § 112 as allegedly containing subject matter that was not described in the specification. It is noted that claims 31-32 are not pending, and claims 33, 35 and 36 have been canceled. Without agreeing with the basis of the rejection, claim 1 has been amended to incorporate the subject matter of claim 6, which was not alleged to be subject to this rejection. Claim 7 depends from claim 1. Claim 37 has been amended to depend from claim 34, which was not alleged to be subject to this rejection. Therefore, the rejection is moot with respect to the present claims. Withdrawal of the rejection is respectfully requested.

Rejections under 35 U.S.C. § 112, second paragraph

Claims 1, 7, 31-33 and 35-37 stand rejected under 35 U.S.C. § 112 as allegedly indefinite in that the Office asserts that it is unclear which strains of fungi are properly classifiable as members of the genus, subgenus, or sections enumerated. As noted, claims 31-32 are not pending, and claims 33, 35 and 36 have been canceled. Without agreeing with the basis of the rejection, claim 1 has been amended to incorporate the subject matter of claim 6, which was not alleged to be subject to this rejection. Claim 7 depends from claim 1. Claim 37 has been amended to depend from claim 34, which was not alleged to be subject to this rejection. Therefore, the rejection is not applicable to the present claims. Withdrawal of the rejection is respectfully requested.

Claim 34 stands rejected under 35 U.S.C. § 112 as allegedly indefinite for reciting redundant subject matter. Without agreeing with the basis of the rejection, claim 34 has been amended to recite the deposit number of the recited strain and to delete an unnecessary recitation. The metes and bounds of claim 34, as amended, would be clearly understood by

one skilled in the art. Reconsideration and withdrawal of the rejection is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 1, 7, 33, 35-37 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over as purportedly being unpatentable over Kyle (United States Patent No. 5,658,767). The rejection is respectfully traversed.

Without agreeing with the alleged reasons for the rejection, but simply in order to expedite prosecution of subject matter acknowledged by the Office as allowable, by the present amendment claims 33, 35 and 36 have been canceled. Claim 1 has been amended to incorporate the subject matter of claim 6, which has been acknowledged by the Office as free of the prior art. Claim 7 depends from claim 1. Claim 37 has been amended to depend from claim 34, which has been acknowledged by the Office to be free of the prior art. In view of the foregoing, withdrawal of the rejection is respectfully requested.

CONCLUSION

Further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned concerning such questions so that prosecution of this application may be expedited.

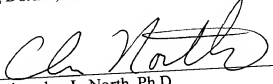
This paper is accompanied by a Petition for and Extension of Time to Respond of three months to April 15, 2005. The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

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